

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
)	
Annual Assessment of the Status of)	
Competition in the Market for the)	MB Docket No. 06-189
Delivery of Video Programming)	
)	
)	

COMMENTS OF THE CITY OF CHAMPAIGN, ILLINOIS

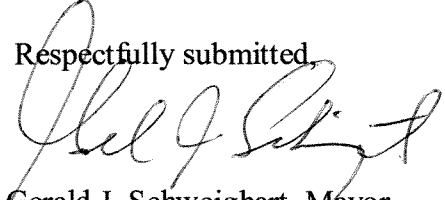
These Comments are filed by the City of Champaign, Illinois in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"), the National League of Cities ("NLC"), the National Association of Counties ("NACo"), the United States Conference of Mayors ("USCM"), and other national municipal organizations. Like the national municipal organizations, the City of Champaign believes that local governments want and encourage competition in the video programming marketplace. The local franchising process works and helps to ensure that all residents share in the benefits that increased competition brings to a community. We actively encourage and welcome potential competitors into our community to provide video and broadband services to all our citizens on a non-discriminatory basis and in accordance with our cable ordinance.

We have just begun renewal discussions with our incumbent cable operator (Insight Communications) and will partake in a renewal process that ensures all the cable-related needs of our community are met well into the future. We are also in the process of updating our City ordinance so all video-related services delivered through the right-of-way (whether cable or IP-based) will be handled in the same manner, ensuring a level playing field for all participants.

Our community previously filed Comments in the franchising proceeding, MB Docket No. 05-311, the Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992. Because this Notice of Inquiry raises many of the same issues that were addressed by our earlier Comments, we are attaching a copy of those Comments for inclusion in this proceeding.

The local cable franchising process functions well in Champaign and it ensures that our community's specific needs are met and that local customers are protected. While we applaud efforts to increase competition in the video programming marketplace, the Commission should do nothing to impair the operation of the local franchising process as set forth under the existing federal regulatory scheme. The local cable franchising process should not be used as an excuse for the failure of new cable service providers to enter into the marketplace.

Respectfully submitted,



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November 28, 2006

Attachment

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In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF THE CITY OF CHAMPAIGN

These Comments are filed by the City of Champaign, Illinois in support of the comments filed by the National League of Cities (NLC) and the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NLC and NATOA, the City of Champaign believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Champaign has a population of 68,000 people. Our franchised cable provider is Insight Communications. Our community has negotiated cable franchises since 1978.

Our Current Franchise

Our current franchise began on March 1, 1994, and expires on February 28, 2009. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not yet negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City of Champaign in the amount of 3 percent of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide 4 analog channels for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have two channels

devoted to educational access; one channel devoted to government access, and one channel devoted to both public and government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator:

- Cable company agrees to place a brochure promoting PEG access twice a year in their customer's cable bills. Brochures paid for and provided by the City.
- Cable company will also insert PEG channel promotional spots (up to 1200 per year) during regular commercial breaks on the system's channels. These promotional spots are produced at the cost of the City and are inserted free of charge by the cable operator.

During franchise negotiations, the cable operator offered, and the City accepted, language which would allow the City to collect a PEG assessment. This assessment could be up to 2 percent of the cable operator's gross annual revenues and must be used solely for PEG access equipment, facilities, administration, and operations. At this time, the City has not requested nor received any funds through this assessment.

Our franchise contains the following requirements regarding emergency alerts on our cable system:

The cable company must provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an audio override capability to permit the City to interrupt and cablecast an audio message on all channels simultaneously in the event of disaster or public emergency. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

- Full-service, staffed office located physically within our community.
- Toll-free telephone capacity to assure at least 95 percent of all calls are answered by the fourth ring and 90 percent of all callers will not wait longer than 30 seconds before speaking with a service representative.
- Local office must be open during normal business hours and at least 4 hours weekly on evenings or weekends.
- On-call emergency maintenance and repair staff available 24 hours a day.
- Service installations must be completed within 7 days of receipt of order.
- Installations will be scheduled within four-hour time frames.
- System maintenance which interferes with the customer's service should be scheduled between midnight and 6 a.m.
- Provides specific timeframes for repair of cable service issues, based on the number of customers impacted and type of problem.
- Provide rebates to subscribers whose service is interrupted for 4 hours or more.
- Service employees must wear employee ID badges.

Our franchise also has a number of other requirements, which benefit the City and its citizens. All public buildings, including our community's public schools, must be provided with basic cable television services free of charge. This allows City officials and our school administrators to monitor breaking news and weather conditions which impact the safety of our community. We also require that the cable operator document and provide the City with updated as-built maps, showing the exact location of their cable plant located in the public right-of-way (ROW). As they continue to extend their system, the operator is required to provide updates to the City quarterly. These maps enable the City to plan and execute rights-of-way management plans and maintain an ever-growing inventory of the utilities in the ROW.

Our original franchise contained the following reasonable build schedule for the cable operator:

Operator was to extend energized trunk to 25 percent of the franchise area per year for 4 years. The operator was also provided adequate periods of time to obtain certificates, licenses, FCC permits, and agreements with utility companies and City departments.

Our current franchise requires that the cable operator provide service to the following areas of our community:

Cable operator shall provide service to any residential dwelling unit within the City, for which there is a density of at least 35 residential dwelling units per mile (if underground cable plant) or 25 residential dwelling units per mile (if aerial cable plant).

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements:

Our current franchise agreement required the cable operator to upgrade/rebuild the then-existing cable system utilizing a fiber rich nodal architecture with an active bandwidth of 5 MHz to 750 MHz with a capacity of at least 110 NTSC 6 MHz channels. The system was to be made two-way operational, with an average of 600, and no more than 800, residential dwelling units served per node.

The cable operator was granted 3 years to complete the upgrade/rebuild. The cable operator successfully completed this upgrade/rebuild within the allotted time. This requirement was beneficial to both our citizens and the cable operator. Our citizens are now enjoying wonderful capacity, services, and reliability of the upgraded network, and the cable operator is able to maximize the potential of their fiber plant by marketing cable, digital cable, premium channels, dozens of pay-per-view channels, video-on-demand, high-speed internet service, and is soon to launch local and long distance telephone services.

Our ordinance contains a nonexclusivity clause, which would allow multiple cable operators to serve our community. The section reads:

Any rights granted by a franchise agreement shall be non-exclusive. The grantor specifically reserves the right to enter into, at any time, such additional franchise

agreements for a cable television system or any component thereof as it deems appropriate, subject to applicable State and Federal law.

Our franchise contains the following insurance and bonding requirements:

Cable operator shall maintain policies of liability, workers' compensation, and property insurance. Cable operator is to maintain combined single limit coverage applying to bodily and personal injury and death and property damage in an amount not less than two million dollars. Upon franchise adoption, the cable operator was to provide to the City two performance bonds and two letters of credit. The first letter of credit was for \$300,000 and was used to guarantee the system upgrade/rebuild of the then-existing cable system. Once the rebuild was completed, it was released. The second performance bond and letter of credit guarantees faithful performance of the franchise. This letter of credit started at \$40,000 and was allowed to increase to reflect changes in the Consumer Price Index.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the Public Works Department as well before it may access the public rights of way: "Prior to commencing any work in the public rights-of-way (ROW) the cable operator shall obtain a permit, which is available to the cable operator at no charge." The permitting process allows City staff to monitor all work done in the ROW to ensure the safety of the public and cable operator during demolition and construction. The City also verifies the ROW is properly restored to the same condition it was in prior to construction, ensuring the safety of the ROW for future use by the public and other utility companies.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement:

Prior to imposing any remedy or sanction against the cable operator, the City shall first provide written notification of the violation and demand correction within a reasonable time. If cable operator fails to correct the violation within the time prescribed, the City will provide at least 10 days notice of a meeting with the City Manager to address the violations. At this meeting the City Manager will consider the positions presented by both sides. If the City Manager determines a violation has occurred and the cable operator has not corrected (or diligently commenced to correct) the violations, the City Manager may impose the remedies provided in the franchise. These include a fine assessment of \$750 per day, per incident, for unexcused violations of the system upgrade requirements and up to \$150 per day, per incident for all other violations. If the stated violation is not curable within 30 days, the cable operator will not be fined, provided the cable operator provides a plan (within 30 days) to remedy the violation and demonstrates good faith efforts in correcting the violation.

The Franchising Process

The cable system serving our community also serves many adjoining communities: City of Urbana, Village of Savoy, Village of Bondville, Village of St. Joseph, Village of Ogden, Village

of Philo, Village of Homer, and parts of rural Champaign County. In 1994 our community worked together with the City of Urbana to jointly renegotiate and issue similar cable franchises to Time Warner Entertainment Company. This allowed the company to quickly obtain franchises in both communities so as to be able to serve a large region, while also allowing for individual provisions in specific franchises in order to tailor them to meet local needs.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

In the event that the State or Federal Government discontinues pre-emption in any area of cable communications over which it currently exercises jurisdiction in such manner as to expand rather than limit municipal regulatory authority, the City may, if it so elects, adopt rules, regulations, and ordinances in these areas, to the extent provided in the then applicable law. Cable operator shall comply with such adopted rules, regulations, and ordinances. [The cable operator also agrees to maintain all PEG commitments in the franchise even if future legislation or court decisions limit or abrogate the ability of the City to require such support for PEG.] The franchise also acknowledges that certain parts of the contract may be abrogated by future legislation or court decisions.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: the franchise agreement is monitored by the Champaign-Urbana Cable Television and Telecommunications Commission, a public body which works as an intermediary between citizens and the cable operator. The Commission's work allows the cable operator to quickly respond to and resolve customer complaints, without invoking the formal enforcement provisions of the franchise. The Commission also holds public hearings, hears testimony concerning applications for and renewals of cable franchises, rate increase requests, and related matters.

Competitive Cable Systems

Our community has never been approached by a competitive provider to provide cable television service and has never denied any provider the opportunity to serve in our community. The franchise agreement is non-exclusive and the City may enter into additional cable television franchise agreements at any time. The City has mechanisms in place to offer the same or a comparable franchise to a competitor upon request. The City welcomes and encourages companies wishing to offer competitive services to offer same to our citizens.

Conclusions

The local cable franchising process functions well in Champaign. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

The City of Champaign worked jointly with the City of Urbana to negotiate our current franchise agreement, a process which we intend to repeat for both franchise renewals and new, competitive entries. By negotiating together, simultaneously, our communities effectively cut the work of the applicant in half, while also protecting the rights of our citizens and meeting the needs of our respective communities.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. By monitoring use of the City's ROW, City staff can verify it is used in a safe manner and restored with the quality construction materials and aesthetics requirements enjoyed by our citizens. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected, as evidenced by our strong customer service standard requirements.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Champaign therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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